XAVIER BECERRA
Attorney General of California
STEVEN D. MUNI
Supervising Deputy Attorney General
JANNSEN TAN
Deputy Attorney General
State Bar No. 237826
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7549
Facsimile: (916) 327-2247
*Attorneys for Complainant*



**BEFORE THE**
**MEDICAL BOARD OF CALIFORNIA**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**Victor H. Baquero, M.D.**<br>**271 Turnpike Dr.**<br>**Folsom, CA 95630**<br><br>**Physician's and Surgeon's Certificate No. A 70124,**<br><br>Respondent. | Case No. 800-2017-036171<br><br>**A C C U S A T I O N** |

Complainant alleges:

**PARTIES**

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 29, 1999, the Medical Board issued Physician's and Surgeon's Certificate No. A 70124 to Victor H. Baquero, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2021, unless renewed.

///

## JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

6. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

7. Section 4021 of the Code states:

" 'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

8. Section 4022 of the Code states:

" 'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

"...

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

9. Section 2266 of the Code states, in pertinent part:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

**PERTINENT DRUG INFORMATION**

10. Alprazolam – Generic name for the drug Xanax. Alprazolam is a short-acting benzodiazepine used to treat anxiety. Alprazolam is a Schedule IV controlled substance, and a dangerous drug pursuant to California Business and Professions Code section 4022.

11. Clonazepam – Generic name for Klonopin. Clonazepam is an anti-anxiety medication in the benzodiazepine family used to prevent seizures, panic disorder, and akathisia. It is a Schedule IV controlled substance, and a dangerous drug pursuant to Business and Professions Code section 4022.

12. Trazodone – Sold under various trade names. Trazodone is an antidepressant medication used to treat major depressive disorder and anxiety disorders. It is a dangerous drug pursuant to Business and Professions Code section 4022.

13. Buproprion - Generic name for the drug Wellbutrin, which is a medication to treat major depressive disorder and to support smoking cessation. It is a dangerous drug pursuant to Business and Professions Code section 4022.

14. Citalopram – Generic name for the drug Celexa, which is a medication to treat major depressive disorder, obsessive compulsive disorder, panic disorder, and social phobia. It is a dangerous drug pursuant to Business and Professions Code section 4022.

15. Amphetamine Salts – Generic name for the drug Adderall, which is a combination drug containing four salts of the two enantiomers of amphetamine, a Central Nervous System (CNS) stimulant of the phenethylamine class. Adderall is used to treat attention deficit hyperactivity disorder and narcolepsy but can be used recreationally as an aphrodisiac and euphoriant. Amphetamine Salts are a Schedule II controlled substance, and a dangerous drug pursuant to Business and Professions Code section 4022.

## FIRST CAUSE FOR DISCIPLINE
**(Gross Negligence)**

16. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), of the Code, in that he committed gross negligence during the care and treatment of Patient A. The circumstances are as follows:

17. Respondent is a physician and surgeon, Board-Certified in Family Medicine. At all times relevant to the charges brought herein Respondent worked in a medical clinic in Folsom, California.

**Patient A**

18. Patient A[1] was a 20-year-old male who was treated by Respondent from October 2011 until the time of his death in December 2013[2]. Patient A had a history of Attention Deficit Disorder, insomnia, depression, mild intermittent asthma, seasonal allergies, back pain, arthritis, tobacco use, cervicalgia[3], drug use and syringomyelia[4]. Prior to seeing Respondent in October 2011, Patient A was taking Fentanyl and Vicodin for pain related to a prior motor vehicle accident and syringomyelia.

19. In November 2011, Respondent saw Patient A for a follow up visit. Patient A complained about significant pain from his back and difficulties sleeping. Patient A also reported the Fentanyl patches falling off. Respondent recommended that Patient A use a Tegaderm[5] dressing. Respondent increased the Fentanyl patches from 50 to 100 mcg/hr. In December 2011, Respondent noticed a pattern of Patient A's patches falling off despite Respondent's recommendation. Respondent checked Patient A's CURES report, and sent Patient A to the UC Davis Pain Clinic. Subsequently, Respondent did not see Patient A for a year and a half, because Patient A moved to San Francisco to live with his mother.

---

[1] Patient names have been redacted and will be provided in discovery, to protect patient confidentiality.

[2] Treatment prior to January 2013 for information purposes only.

[3] Cervicalgia is a term used to describe pain or significant discomfort in the neck.

[4] Syringomyelia is the development of a fluid-filled cyst within the spinal cord.

[5] Tegaderm is a transparent dressing used to cover and protect surgical wounds, minor burns, IV sites and central lines.

20. On or about January 18, 2013, Respondent saw Patient A to re-establish care. Patient A's pertinent history included Patient A attending a drug rehabilitation program and behavioral issues such as jumping out of a moving car. Patient A reported a history of mild asthma and illegal drug use, which included Schedule IV drugs and ketamine. He was not using illicit drugs at the time, and reported completing a month-long rehabilitation program. He smoked a half pack of cigarettes a day for the previous three years and rarely drank alcohol. He requested Sexually Transmitted Disease testing and refills of trazodone that he took for sleep, as well as Adderall for attention problems. Respondent failed to verify if Patient A had Attention Deficit Hyperactivity Disorder before prescribing Adderall to Patient A.

21. On or about February 20, 2013, Respondent saw Patient A for an office visit. Respondent documented the reason for the visit as "Stress." Patient A reported legal issues relating to felony charges for possession of drugs. He expressed suicidal ideation and reported being in jail recently because a friend he was with had drugs on him. He reported "being tested on a regular basis and that he has been clean for some time." His chart notes indicated pain in his upper back with no recent trauma and no radiation of the pain. Patient A's examination revealed elevated blood pressure of 134/92, appearing overwhelmed, in moderate distress, tearful, cooperative, crying, decreased mood with tightness and tenderness over the rhomboids with a palpable trigger point. Respondent failed to document or perform a heart or lung examination. Respondent performed a trigger point injection of both rhomboids and "immediate relief was appreciated." Respondent diagnosed the patient with Adjustment reaction and back pain. He counseled Patient A regarding stress management and started Patient A on lithium for "suicidal ideation", and clonazepam as needed "since he is so overwhelmed." Respondent considered prescribing an SSRI antidepressant at follow up.

22. On or about February 22, 2013, Patient A's mother called Respondent's office, and reported that Patient A had taken all 30 clonazepam pills, and that Patient A "wished he would not have woken up this morning and that if he had a gun he would put a bullet in his head." On further questioning with Patient A himself, the patient stated he did not feel well, was having a lot of depression and anxiety, and expressed suicidal thoughts. Patient A also wished that "someone

would put a gun to his head and end it for him." Patient A sought a prescription for Xanax. Respondent noted that Patient A had used 30 tablets of clonazepam in the previous two days, and did not prescribe Xanax as Patient A requested. He also gave Patient A information regarding psychiatric resources.

23. On or about February 27, 2013, Respondent saw Patient A for a follow up visit. Respondent documented the reason for the visit as "Stress." Patient A reported less suicidal ideation but stopped lithium a few days prior. He denied any mood swings but felt overwhelmed, anxious and had trouble sleeping. Patient A denied current drug use. He stated he had not done well in the past on anti-psychotics but did well on Wellbutrin (buproprion). He was open to seeing a counselor and his back pain had significantly improved. Patient A's blood pressure was 130/90, pulse 97, normal affect. Patient A's mental status was noted as "tearful at first, otherwise good concentration, cooperative, attentive and somewhat motivated to get better." Respondent did not perform a heart or lung examination. Respondent diagnosed Patient A with depression and recommended cognitive therapy. Respondent prescribed Celexa (citalopram) and planned to add Wellbutrin at the following visit. Respondent prescribed clonazepam, "short-term for insomnia, intermittent anxiety. Risks and benefits discussed in detail."

24. On or about March 12, 2013, Patient A called Respondent's office and requested a refill of Adderall and trazodone. He also wanted his antidepressant medication changed. Respondent refilled the Adderall and advised Patient A follow up with an appointment.

25. On or about March 22, 2013, Respondent saw Patient A for medication follow up. Patient A reported doing better overall other than feeling tired and was only taking a half tablet of the citalopram. He denied drug use. Physical examination was again significant for elevated blood pressure of 140/90, pulse 74. Patient A had some mild spasm in his neck and upper back. Respondent diagnosed Adjustment reaction and advised Patient A to continue trazodone, citalopram, and clonazepam. Respondent also added Wellbutrin. He recommended physical therapy, NSAIDs and heat for the spasms. He advised Patient A to follow up in one month.

26. On or about April 11, 2013, Patient A called Respondent's office for an Adderall refill. Respondent refilled the prescription.

27. On or about April 24, 2013, Patient A called and requested a refill of Adderall, Celexa, trazodone, Wellbutrin, and Klonopin, because he lost his suitcase with all of his medications. Respondent refilled his medications.

28. On or about May 29, 2013, Respondent refilled Patient A's prescriptions for Klonopin, Wellbutrin and Celexa.

29. On or about June 27, 2013, Respondent refilled Patient A's prescriptions for Adderall and Klonopin over the phone.

30. On or about July 9, 2013 Patient A's mother requested an urgent authorization for a pain specialist. Respondent authorized the pain specialist referral. The pain specialist prescribed suboxone and lorazepam in July 2013.

31. On or about July 24, 2013, Patient A called Respondent's office stating he spilled his Wellbutrin and Clonazepam down the sink and requested an early refill. The staff that took the message noted Patient A's speech was slurred and slow. Respondent did not speak to Patient A, and refilled Patient A's prescription for clonazepam, buproprion, trazodone and citalopram over the telephone.

32. On or about August 26, 2013, Respondent saw Patient A for an office visit. The purpose of the visit was for a medication follow up. Patient A requested a refill of his prescription for Adderall. He stated that he was working at a cigarette-vending store as well as a marijuana dispensary. His mood was good. He was interested in quitting smoking and asked about Chantix. He reported taking Celexa, Wellbutrin and Clonazepam regularly. He denied any current drug use. His vital signs, general appearance, mental status and musculoskeletal examinations were normal. Skin findings included some scratches and bruising on his nose and arms. Respondent diagnosed Patient A with Depression and Tobacco Use Disorder and continued Adderall, Celexa, Wellbutrin and clonazepam. He also prescribed Chantix. He discussed the "risks and benefits" of the medication and advised to take it for 3-6 months.

33. During the period of January 18, 2013 to November 27, 2013, Respondent prescribed Adderall XR 30 mg #30 per month to Patient A.

///

34. Respondent prescribed clonazepam 0.5mg #30 to Patient A on February 20, and March 22, 2013, and increased it to 2 mg #60 tablets monthly from February 27, 2013 to December 15, 2013.

35. Respondent committed gross negligence in his care and treatment of Patient A which included, but was not limited to the following:

a. Respondent failed to review any specific symptoms for Attention Deficit Disorder and did not confirm that Patient A met the Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for the condition.

b. Respondent failed to mention, obtain or request any prior diagnostic testing.

c. Respondent failed to confirm any prior prescriptions with the pharmacy or CURES reports.

d. Respondent failed to check for and/or document symptom scales and the effects of the medication on Patient A's function or symptoms.

e. Respondent failed to ensure that a psychiatrist took over the prescription for medications during the eleven months he continued to refill the prescriptions.

f. Respondent failed to perform periodic review of Patient A's prescriptions, given that Patient A had a known history of drug abuse. Respondent did not discuss the risk of addiction, failed to perform any toxicology screenings, and filled prescriptions over the phone.

**SECOND CAUSE FOR DISCIPLINE**
**(Repeated Negligent Acts)**

36. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patients A, as more particularly alleged hereinafter: Paragraphs 16 through 35, above, are hereby incorporated by reference and realleged as if fully set forth herein.

37. Respondent committed repeated negligent acts in his care and treatment of Patient A which included, but was not limited to the following:

///

a. Respondent prescribed Adderall and Klonopin to a patient who had a history of drug addiction, and IV drug use without monitoring of urine toxicology screenings, review of CURES reports, or discussion with the patient regarding the risk of addiction of these medications.

b. Respondent failed to recognize Patient A's red flags for addiction including asking for early refills, suicidal ideation, mood swings, reporting that his medications had "fallen down the sink" or his "suitcase was stolen".

c. Respondent's pain agreement failed to specifically address stimulants and benzodiazepines.

d. Respondent failed to perform any objective diagnostic testing, labs, periodic review, and urine tests.

e. Respondent failed to address Patient A's consistently elevated blood pressure. Respondent failed to perform a cardiovascular examination and failed to order any labs. He continued to prescribe Adderall without stopping or changing the dosage of the medication in light of the high blood pressure.

f. Respondent prescribed Klonopin without a specific diagnosis to indicate the need for a long term twice daily benzodiazepine.

**THIRD CAUSE FOR DISCIPLINE**
**(Prescribing Dangerous Drugs without Appropriate Examination or Medical Indication)**

38. Respondent is further subject to disciplinary action under sections 2227 and 2334, as defined by section 2242, of the Code, in that he prescribed controlled substances and dangerous drugs to Patient A without an appropriate medical examination or medical indication, as more particularly alleged hereinafter: Paragraphs 16 through 37, above, are hereby incorporated by reference and realleged as if fully set forth herein.

**FOURTH CAUSE FOR DISCIPLINE**
**(Failure to Maintain Adequate and Accurate Medical Records)**

39. Respondent is further subject to discipline under sections 2227 and 2334, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate medical records

in the care and treatment of Patient A as more particularly alleged hereinafter: Paragraphs 16 through 38, above, are hereby incorporated by reference and realleged as if fully set forth herein.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 70124, issued to Victor H. Baquero, M.D.;

2. Revoking, suspending or denying approval of Victor H. Baquero, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Victor H. Baquero, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: July 12, 2019

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
*Complainant*

SA2019300025
13788802.docx